

§ 1.1405

(2) The basis for the complainant's claim that the denial of access is improper;

(3) The remedy sought by the complainant;

(4) A copy of the written request to the utility for access to its poles, ducts, conduits or rights-of-way; and

(5) A copy of the utility's response to the written request including all information given by the utility to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a utility's written response, or if the utility denies the complainant any other information needed to establish a *prima facie* case.

[43 FR 36094, Aug. 15, 1978, as amended at 44 FR 31649, June 1, 1979; 45 FR 17014, Mar. 17, 1980; 52 FR 31770, Aug. 24, 1987; 61 FR 43025, Aug. 20, 1996; 61 FR 45619, Aug. 29, 1996]

§ 1.1405 File numbers.

Each complaint which appears to be essentially complete under § 1.1404 will be accepted and assigned a file number. Such assignment is for administrative purposes only and does not necessarily mean that the complaint has been found to be in full compliance with other sections in this subpart. Petitions for temporary stay will also be assigned a file number upon receipt.

[44 FR 31650, June 1, 1979]

§ 1.1406 Dismissal of complaints.

(a) The complaint shall be dismissed for lack of jurisdiction in any case where a suitable certificate has been filed by a State pursuant to § 1.1414 of this subpart. Such certificate shall be conclusive proof of lack of jurisdiction of this Commission. A complaint against a utility shall also be dismissed if the utility does not use or control poles, ducts, or conduits used or designated, in whole or in part, for wire communication or if the utility does not meet the criteria of § 1.1402(a) of this subpart.

(b) If the complaint does not contain substantially all the information required under § 1.1404 the Commission may dismiss the complaint or may require the complainant to file additional information. The complaint shall not be dismissed if the informa-

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tion is not available from public records or from the respondent utility after reasonable request.

(c) Failure by the complainant to respond to official correspondence or a request for additional information will be cause for dismissal.

(d) Dismissal under provisions of paragraph (b) of this section above will be with prejudice if the complaint has been dismissed previously. Such a complaint may be refiled no earlier than six months from the date it was so dismissed.

[43 FR 36094, Aug. 15, 1978, as amended at 44 FR 31650, June 1, 1979]

§ 1.1407 Response and reply.

(a) Respondent shall have 30 days from the date the complaint was filed within which to file a response. Complainant shall have 20 days from the date the response was filed within which to file a reply. Extensions of time to file are not contemplated unless justification is shown pursuant to § 1.46. Except as otherwise provided in § 1.1403, no other filings and no motions other than for extension of time will be considered unless authorized by the Commission. The response should set forth justification for the rate, term, or condition alleged in the complaint not to be just and reasonable. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts and exhibits shall be verified by the person who prepares them. The response, reply, and other pleadings may be signed by counsel.

(b) The response shall be served on the complainant and all parties listed in complainant's certificate of service.

(c) The reply shall be served on the respondent and all parties listed in respondent's certificate of service.

(d) Failure to respond may be deemed an admission of the material factual allegations contained in the complaint.

[44 FR 31650, June 1, 1979]

§ 1.1408 Number of copies and form of pleadings.

(a) An original and three copies of the complaint, response, and reply shall be filed with the Commission.